a domicile of choice in New York, joined the army, and was stationed consecutively in Texas, at Governor's Island in New York, in Chicago, and again, as general, at Governor's Island, where his headquarters were when he died. He intended to live in the District of Columbia after leaving the island. The surrogate held that his residence in federal territory, Governor's Island, combined with his intention to live in federal territory, the District of Columbia, gave him a domicile in federal territory, so that his estate was not subject to the New York transfer tax. It would seem that after entering the army the deceased in fact abandoned his state domicile in New York. Upon his return to Governor's Island he had not such *animus manendi* as would give him a municipal domicile there, or enable him to reacquire *in fact* his state domicile in New York. Thus the real issue raised by the facts of the principal case is whether, when in fact he abandoned New York as his domicile, his domicile of origin reverted or his domicile of choice continued, since no new domicile had been acquired. The American rule, which is certainly preferable as applied to American conditions, is that a domicile of choice continues until superseded;[17] hence the deceased was domiciled in New York at his death.

WIFE'S RIGHT TO SET ASIDE VOLUNTARY ANTE-NUPTIAL CONVEYANCES. — While early established in England that a secret voluntary conveyance, made by a woman after engagement and before marriage, might be set aside by the husband as a fraud upon his marital rights,[1] it remained for American courts to extend like protection to the dower rights of the wife.[2]

In many of the cases, where active representations concerning the fiancé's property were used to induce the marriage, the result is clear;[3] but it is probable that in England constructive fraud, based on mere passive concealment, was sufficient ground for relief,[4] and such is certainly the result of many American cases.[5] While this reasoning suggests

[17] On this point the English and American rules conflict, the former holding that the domicile of origin reverts; the latter, that the domicile of choice continues. See Udny *v.* Udny, L. R. 1 H. L. Sc. 441; Desmare *v.* United States, 93 U. S. 605, 610. For a discussion of the relative merits of the two rules, and a conclusion in favor of the American view, see JACOBS, DOMICIL, §§ 110–113, and 190–203.

[1] Carleton *v.* Earl of Dorset, 2 Vern. 17.

[2] The question has not arisen in England. But see McKeogh *v.* McKeogh, Ir. R. 4 Eq. 338, 346; 1 BRIGHT, HUSBAND AND WIFE, 357; 2 VAIZEY, SETTLEMENTS, 1587.

[3] See Rice *v.* Waddill, 168 Mo. 99, 67 S. W. 605; Hach *v.* Rollins, 158 Mo. 182, 59 S. W. 232; Swaine *v.* Perrine, 5 Johns. Ch. (N. Y.) 482; Petty *v.* Petty, 4 B. Mon. (Ky.) 215; Dunbar *v.* Dunbar, 254 Ill. 281, 98 N. E. 563; Bookout *v.* Bookout, 150 Ind. 63, 49 N. E. 824.

[4] Goodard *v.* Snow, 1 Russ. 485.

[5] Ward *v.* Ward, 63 Oh. St. 125, 57 N. E. 1095, 51 L. R. A. 858; Arnegaard *v.* Arnegaard, 7 N. Dak. 475, 75 N. W. 797, 41 L. R. A. 258; Smith *v.* Smith, 6 N. J. Eq. 515 (*semble*); Goff *v.* Goff, 60 W. Va. 9, 53 S. E. 769; Baird *v.* Stearne, 15 Phila. 339, 39 Leg. Int. 374; Chandler *v.* Hollingsworth, 3 Del. Ch. 99; Leach *v.* Duvall, 8 Bush. (Ky.) 201; Wallace *v.* Wallace, 137 Ia. 169, 114 N. W. 913. See also Babcock *v.* Babcock, 53 How. Pr. (N. Y.) 97; Pomeroy *v.* Pomeroy, 54 How. Pr. (N. Y.) 228. But see Butler *v.* Butler, 21 Kan. 521, 525; Alkire *v.* Alkire, 134 Ind. 350, 32 N. E. 571.

the recognition of an equitable dower, analogous to the equitable interest of a contract vendee of land, such hypothesis is nowhere [6] relied on by the courts, and its infirmities seem obvious.

In two recent decisions, supported by some authority,[7] it is argued, from the analogy of fraudulent conveyances by a debtor, that the conveyance is in fraud of the prospective inchoate dower, which is to attach upon marriage. *Deke* v. *Huenkemeier*, 260 Ill. 131, 102 N. E. 1059; *McAulay* v. *McAulay*, 79 S. E. 785 (S. C.). While a person who reasonably foresees that he will contract debts owes a duty to preserve property sufficient to secure them, unless engagement for some other reason raises a duty to retain realty to which dower may later attach, there is no foreseeable obligation on the part of one contemplating matrimony to possess at marriage any real estate at all.

The true basis for relief, then, as pointed out in a few modern decisions,[8] must be that there is a duty growing out of the peculiarly close fiduciary relationship of persons about to enter a status involving such sacred obligations as marriage. That persons affianced do stand in a fiduciary relationship to each other is also recognized in those cases which allow a wife to set aside an otherwise valid ante-nuptial contract to relinquish dower, when, though no misrepresentation appears, there was not a full disclosure of the amount of the fiancé's real estate.[9] Broadly defined, the prospective husband's duty should be to act with scrupulous regard for the future prosperity of the mutual enterprise in which the two are about to embark, and particularly to safeguard those material incidents which the law attaches to that relation for the benefit of the wife. This relationship should also impose the duty to disclose fully all circumstances which in any way affect her interests, either present or in prospect.

It would seem that the man's breach of this duty by a secret voluntary conveyance of land, if discovered before marriage, would be just excuse for the fiancée to repudiate her promise.[10] Such a conclusion is not difficult to reach if the promise was made with the expectation of receiving dower in this specific land, and it is submitted that even where she was ignorant of the fact of ownership, such disregard of her interests would justify the termination of the engagement.

If the conveyance be discovered before marriage, it seems obvious that repudiation is the only remedy immediately available, since it would be fruitless to extend specific protection to an incident depending for complete validity on a primary obligation (the duty to keep the promise to marry) not specifically enforceable.

In addition, it is held that where the marriage relation is entered into after knowledge of the breach of duty, the right to set aside the con-

[6] Except perhaps in Poston *v.* Gillespie, 5 Jones Eq. (N. C.) 258, 262.

[7] See Youngs *v.* Carter, 10 Hun (N. Y.) 194; Higgins *v.* Higgins, 219 Ill. 146, 76 N. E. 86; Kelly *v.* McGrath, 70 Ala. 75. In view of the weighty *dicta* to the effect that the statute of 13 Eliz. is merely declaratory of the common law, it is perhaps unsound to argue against this analogy that the creditor's right is statutory. See Cadogan *v.* Kennett, 2 Cowp. 432, 434, per Lord Mansfield.

[8] Ward *v.* Ward, *supra*; Arnegaard *v.* Arnegaard, *supra*.

[9] Hessick *v.* Hessick, 169 Ill. 486, 48 N. E. 712; Taylor *v.* Taylor, 144 Ill. 436, 33 N. E. 532; Kline *v.* Kline, 57 Pa. 120.

[10] See Wharton *v.* Lewis, 1 Car. & P. 529; Cheshire *v.* Payne, *supra*, 627; Jordan *v.* Black, *supra*, 147.

veyance is lost;[11] a result at least doubtful on principle, since *primâ facie* it amounts to a denial of the most adequate remedy for an admitted wrong on the ground that the wronged person has taken the only possible course to make it available. It may be argued that marriage after knowledge affords ground for presuming consent to the conveyance; but if merely a rebuttable presumption of fact it could hardly support the result of the cases cited, and if a conclusive presumption of law, it is submitted, it is likely to do violence to the truth as many times as otherwise. Conceivably, the desirability of interfering as little as possible in a relation so peculiarly personal as that of marriage might be ground for a rule of policy against affording post-nuptial relief for ante-nuptial wrongs which were discovered before the relation had commenced.

If, in violation of his duty to disclose, the conveyance is kept secret until after the marriage, the wife has been placed, by what amounts to active misrepresentation, in a situation where this right to terminate the relation is no longer available, and so specific restitution is the only adequate remedy. If the above definition of the fiancé's duty be accepted, those decisions which hold that a secret gift of land to one to whom there is some moral obligation, as a dependent child, or an aged mother, is not a fraud upon the intended wife,[12] would seem difficult to reconcile. Certainly the prospective dower interest is no less impaired, nor does the moral obligation to the grantee seem sufficient to justify concealment from the wife.[13] But since the conflicting claims of both wife and donee are essentially equitable, the wrong of the grantor in concealing the gift from his fiancée does not seem sufficient reason for disturbing the legal title.[14]

ECONOMIC PRINCIPLES OF THE LAW OF WATERS. — A system of water-rights may be adapted to the economic conditions of one country and yet be entirely unsuited to the needs of another. All systems start by treating water, like air and light, as *publici juris*. In England, however, the greatest possible use of water in watercourses was not essential to prosperity, and all but riparian owners were strictly excluded from its use.[1] Riparian owners could use it for domestic and for certain secondary purposes such as irrigation.[2] But the flow of water could not be sub-

[11] See cases cited in note 7, *supra*. *Contra*, Poston *v.* Gillespie, *supra*.

[12] Hamilton *v.* Smith, 57 Ia. 15, 10 N. W. 276; Fennessey *v.* Fennessey, 84 Ky. 519, 2 S. W. 158; Dudley *v.* Dudley, 76 Wis. 567, 45 N. W. 602; Champlin *v.* Champlin, 16 R. I. 314, 15 Atl. 85. And see for a similar doctrine in England, cases explainable on other grounds. Hunt *v.* Matthews, 1 Vern. [3d ed.] 408; King *v.* Cotton, 2 P. Wms. 674.

[13] See England *v.* Downs, 2 Beav. 522, 529; Taylor *v.* Pugh, 1 Hare 608, 614–615; Williams *v.* Carle, 10 N. J. Eq. 543, 550–551.

[14] It is conceivable that the courts, although unwilling to set aside the voluntary conveyance, might make the wife whole by giving her a correspondingly larger claim in any land retained. However, to convert such an equity into a legal right would necessitate objectionable litigation against the husband; while if allowed to remain as a mere equity it would be valueless against a purchaser without notice, while by its indefiniteness effectually preventing all alienation to one having notice.

[1] Embrey *v.* Owen, 6 Ex. 353; Mason *v.* Hill, 5 B. & Ad. 1.

[2] Embrey *v.* Owen, *supra*; Weston *v.* Alden, 8 Mass. 135; Blanchard *v.* Baker,